

Message Text

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SUBJECT: FEBRUARY 6-14 UN WORKING GROUP ON CODE OF CONDUCT
RELATING TO TRANSNATIONAL CORPORATIONS: DISCUSSION OF
OUTLINE SECTIONS IIIA (TNC OBLIGATIONS) AND IVA (TNC
TREATMENT BY GOVERNMENTS)

REF: USUN 0546

1. SUMMARY: AS REFTEL NOTED, MOST SIGNIFICANT ACHIEVE-
MENT OF MEETING WAS APPARENT BROAD G-77 ACCEPTANCE OF
CONCEPT OF A SECTION IV IN CODE COVERING TREATMENT OF
TRANSNATIONAL ENTERPRISES (TNE'S) BY GOVERNMENTS. SOME
INDICATION OF POSSIBLE FLEXIBILITY IN CONTENTIOUS SUB-
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STANTIVE AREAS (CONTRACT RENEGOTIABILITY, PERMANENT
SOVEREIGNTY, APPLICABILITY OF CUSTOMARY INTERNATIONAL LAW)
ALSO HINTED, AND TONE OF DISCUSSIONS WAS CONSTRUCTIVE. NO
OBJECTIONS WERE RAISED TO FREQUENT REFERENCES FROM FLOOR
AND CHAIR TO RELEVANT CIEC, ILO AND OECD TEXTS. OECD
DELEGATIONS GAVE IMPRESSION OF SOLID AND WELL-COORDINATED
POSITIONS ON ISSUES IN IIIA AND IV, END SUMMARY.

2. PERMANENT SOVEREIGNTY (SECTION III(A)(1) FIRST SUB-
PARA OF CHAIRMAN'S OUTLINE): AFTER QUICK CONSENSUS ON A

REFERENCE TO RESPECT BY TNC'S OF NATIONAL SOVEREIGNTY, DISCUSSION FOCUSED ON TWO ISSUES: OVERALL BALANCE IN ANY CODE BETWEEN TNE AND GOVERNMENT ACTIONS AFFECTING THE

INVESTMENT CLIMATE, AND PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES, WEALTH AND ECONOMIC ACTIVITIES.

3. ON FIRST POINT, OECD DELS, INCLUDING U.S., WEIGHED IN HEAVILY ON NEED FOR BALANCE, AND LINKED RESPECT FOR SOVEREIGNTY TO SECTION IV ISSUES. FRG ON BEHALF OF EC-9 PRESSED LINKAGE TO ADEQUATE REFERENCE TO INTERNATIONAL LAW, PARTICULARLY WITH REGARD TO EXPROPRIATION AND DUE PROCESS, AND ADEQUATE PROVISIONS ON DISPUTE SETTLEMENT. JAPAN DEL (UNUSUALLY ACTIVE AT THIS MEETING) STRESSED NEED FOR LIMITATION ON ARBITRARY STATE ACTIONS. U.S. ALSO NOTED CIEC INVESTMENT LANGUAGE ON SOVEREIGNTY ISSUE, AND IMPORTANT DISTINCTION IN CIEC AND OECD GUIDELINES BETWEEN CONDITIONS OF ESTABLISHMENT AND TREATMENT OF ESTABLISHED INVESTMENTS.

4. ONLY BENIN DEL, E EUROPEANS (AND AFTER DEPARTURE OF PRINCIPAL MEXICAN DEL SEPULVEDA, HIS REPLACEMENT BARONA) QUESTIONED APPLICABILITY OF CODE TO GOVERNMENTS. CHAIR-LIMITED OFFICIAL USE
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MAN NIKLASSON (SWEDEN) HIMSELF STRESSED THAT GROUP HAD PREVIOUSLY DECIDED THAT BOTH TNC TREATMENT AND TNC OBLIGATIONS WOULD BE DISCUSSED, AND RECOMMENDED CIEC LANGUAGE AS POSSIBLE POINT OF DEPARTURE.

5. PERMANENT SOVEREIGNTY DISCUSSION SAW OECD COUNTRIES EMPHASIZING RELEVANCE OF INTERNATIONAL LAW AND PRACTICE, AND CRITICIZING BREADTH AND IMPRECISION OF FORMULA. CANADIAN (COLLI) NOTED CANADIAN SENSITIVITY TO SOVEREIGNTY ISSUES AS HOST COUNTRY, BUT ARGUED THAT GLOBAL INTERDEPENDENCE REQUIRED EXTENSION OF PRINCIPLES OF COMITY, INTERNATIONAL LAW, AND CONSULTATION TO RESOLVE CONFLICTS OF JURISDICTION. U.S. DEL NOTED UNCHANGED U.S. POSITION ON CERDS AND NIEO ISSUES RAISED BY FORMULA, AND PRACTICAL DIFFICULTIES RAISED BY CONCEPTS IN THE TEXT, FOR EXAMPLE THE EXTRATERRITORIALITY IMPLICIT IN THEM.

6.G-77 LARGELY TOOK CALVO LINE IN THE DISCUSSION, WITH INDIAN BHATT AND CUBAN DEL ARGUING DOMESTIC LAW EXCLUSIVELY, APPLICABLE IN INVESTMENT CONTEXT. SIGNIFICANTLY, MEXICAN (SEPULVEDA) RECOGNIZED EXISTENCE OF CUSTOMARY INTERNATIONAL LAW, BUT ASSERTED THERE WAS A VOID IN SUCH LAW REGARDING TNC'S WHICH CODE WOULD FILL; OTHERWISE HE TOO AGREED DOMESTIC LAW WAS EXCLUSIVE (SEE PARA 21 BELOW). POSSIBILITY OF AMENDMENT TO PROVIDE A MORE CONCRETE DEFINITION OR TO INCLUDE A JURISDICTIONAL OR

TERRITORIAL LIMITATION WAS FLOATED BY THE CHAIR, THE SECRETARIAT LEGAL ADVISER, ;ND FRENCH; A FEW G-77 DELS EXPRESSED INTEREST. U.S. DEL NOTED A QUALIFICATION BASED ON JURISDICTION ALONE WOULD BE CIRCULAR AND WOULD

NOT MAKE LANGUAGE MORE PALATABLE.

7. OBSERVANCE OF HOST COUNTRY LAW AND JURISDICTION (III (A)(1) SECOND AND THIRD SUB-PARAS). LIMITED DISCUSSION COVERED LINKAGES TO SECTION IV ISSUES, AND U.S. LIMITED OFFICIAL USE
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OR OTHER OECD DELS COVERED ALL POINTS IN U.S. REDRAFT OF SECTION III(A)(1). G-77 MINIMIZED THESE LINKAGES, AND AGAIN TOOK A CALVO LINE ON EXCLUSIVITY OF DOMESTIC LAW. CHAIRMAN NOTED POTENTIAL CONFLICT OF JURISDICTION PROBLEMS, AND SQUARELY PLACED ONUS OF RESOLVING THEM ON GOVERNMENTS RATHER THAN TNCS.

8. ADHERENCE TO ECONOMIC AND DEVELOPMENT GOALS (III(A)(2) FIRST-THIRD SUB-PARAS). U.S. DEL, WITH OECD COUNTRY SUPPORT, LINKED ANNOTATIONS TO SECTION IV, IN PARTICULAR NEED FOR CLARITY AND PREDICTABILITY OF NATIONAL GOALS AND POLICIES. U.S. ALSO INSISTED ON NEED FOR CIEC QUALIFYING LANGUAGE REGARDING CONSISTENCY OF TNC CONTRIBUTIONS WITH SOUND COMMERCIAL PRACTICES. YUGOSLAVS, WITH SUPPORT OF PERU AND CUBAN DELS, ARGUED FOR MORE MANDATORY FORMULA, AND CUBAN MENTIONED NEED FOR INFORMATION REQUIREMENTS TO MONITOR TNC COMPLIANCE. NIKLASSON, AS HE DID HELPFULLY THROUGHOUT MOST OF SESSION, RECOGNIZED OECD COUNTRY POINTS IN HIS SUMMARY OF DISCUSSION.

9. RESPONSIVENESS OF TNCS TO SHORT TERM NATIONAL PROBLEMS (III(A)(2) FOURTH PARA). IN A HELPFUL DEVELOPMENT GIVEN AMBIGUITY OF FORMULATION, NIKLASSON SUGGESTED, AND GROUP QUICKLY AGREED, THAT THIS POINT WAS COVERED BY OTHER PARTS OF OUTLINE AND SHOULD BE DELETED.

10. CONTRACT RENEGOTIABILITY (III(A)(2) FIFTH SUB-PARA). NIKLASSON INTRODUCTION TO POINT SUGGESTED NEED FOR GRANDFATHER CLAUSE NO MATTER WHAT LEGAL NATURE OF CODE MIGHT BE, AND URGED GROUP TO CONSIDER WAYS TO MAKE POINT MORE GENERALLY ACCEPTABLE. U.S. DEL STRONGLY OBJECTED TO PRINCIPLE AS STATED, AND URGED IT BE RECAST IN FAVOR OF OBSERVANCE OF CONTRACTS FREELY ENTERED INTO, PERHAPS
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ENVISIONING THAT THROUGH MUTUAL DESIRE OF PARTIES,

MODIFICATIONS MIGHT BE FREELY NEGOTIATED; LINKAGES WERE MADE TO SECTION IV ISSUES OF RESPECT OF CONTRACTS AND OTHER AGREEMENTS, NON-DISCRIMINATION AND EQUITABLE TREATMENT OF TNC'S, AND ROLE OF INTERNATIONAL LAW. INDIAN AND KENYAN DELS ALSO EMPHASIZED NORMAL RULE OF RESPECT OF CONTRACTS AND SOUGHT TO LIMIT RENEGOTIABILITY TO CONTRACTS FROM COLONIAL PERIODS UNDUELY ADVANTAGING METROPOLITAN COMPANIES, AND TO LONG-TERM CONTRACTS (NOT DEFINED). A NUMBER OF INTERVENTIONS, INCLUDING FRG FOR EC-9, QUESTIONED WHETHER ANY SUCH COLONIAL ERA CONCESSIONS

REMAINED UNALTERED. BENIN AND ZAIRE DELS, HOWEVER, ARGUED FOR BLANKET RULE OF RENEGOTIABILITY, ASSUMING THAT ALL CONTRACTS BETWEEN TNC'S AND DEVELOPING COUNTRIES ARE UNEQUAL BY DEFINITION IN MOST CASES. U.N. TNC CENTRE LEGAL ADVISER (ASANTE OF GHANA) GAVE GENERALLY GOOD REVIEW OF ISSUES AT REQUEST OF CHAIRMAN, BUT SUBSEQUENTLY CIRCULATED A SHORT NOTE ON SUBJECT, WHOSE BIAS AND SHORTCOMINGS U.S. DEL AND FRG FOR EC-9 FELT COMPELLED TO CRITICIZE, PARTICULARLY SINCE BHATT TOOK INITIATIVE IN SESSION TO PRAISE THE PAPER. IN CLOSING OFF THIS POINT, NIKLASSON MADE PLEA FOR FLEXIBLE, NON-DOCTRINAIRE TREATMENT OF THIS DIFFICULT ISSUE.

11. ADHERENCE TO HOST COUNTRY SOCIO-CULTURAL VALUES (III(A)(3)). U.S.-LED DISCUSSION BY OECD COUNTRIES NOTED ADEQUACY OF FIRST FEW LINES OF FORMULA DRAFTED BY CHAIRMAN, AND OBJECTED TO PEJORATIVE TONE OF FINAL CLAUSE REGARDING TRANSPLANTING OF "ALIEN ELEMENTS"; CIEC GOOD CORPORATE CITIZEN APPROACH WAS COMMENDED, AND LANGUAGE OF RESPECT, RATHER THAN COMPATIBILITY OF TNC ACTIONS WITH SUCH VALUES WAS URGED AS MORE APPROPRIATE, PARTICULARLY SINCE THE DEFINITION OF SUCH VALUES IN ANY COUNTRY IS DIFFICULT. FRENCH SUGGESTED REWORDING TO EFFECT THAT TNC ACTIONS SHOULD NOT ADVERSELY AFFECT LIMITED OFFICIAL USE
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HOST COUNTRY VALUES, WHICH NIKLASSON PICKED UP IN HIS SUMMARY. INDIAN DEL TOOK G-77 LEAD IN ARGUING FOR BROADER SCOPE OF SUB-PARA TO COVER SOCIAL POLICY AND EMPLOYMENT ISSUES. NIKLASSON BLUNTED THIS BY NOTING THESE ISSUES ADDRESSED ELSEWHERE, AND AGREED THAT LANGUAGE INVOLVING A TNC OBLIGATION TO MAKE POSITIVE CONTRIBUTION IN SOCIO-CULTURE AREA WOULD GO TOO FAR.

12. RESPECT FOR HUMAN RIGHTS AND SOUTHERN AFRICA ISSUES (III(A)(4)). U.S. DEL TOOK LEAD IN SUPPORT OF SUB-PARA ON RESPECT BY TNC'S OF HUMAN RIGHTS, AND NOTED HIGH IMPORTANCE ATTACHED BY USG TO THESE ISSUES. FRG DEL STRESSED LINKAGE TO SECTION IV ISSUE OF NATIONAL TREATMENT. ONLY SWISS DEL QUESTIONED PROPRIETY OF

REQUESTING TNC'S TO RESPECT RIGHTS TRADITIONALLY A MATTER OF INTERGOVERNMENTAL AGREEMENT AND OBSERVANCE, AND URGED SIMPLE FORMULA ON NON-DISCRIMINATION BY TNC'S ON BASIS OF RACE, RELIGION OR SEX, SIMILAR TO PROVISION IN EUROPEAN PARLIAMENT DRAFT TNE CODE. IN LIGHT OF ACTIVITY IN OTHER U.N. FORA ON SOUTHERN AFRICA ISSUES, CONSENSUS SUPPORTED DEFERRAL OF CONTENTIOUS PROBLEMS RAISED BY SUB-PARA ON NON-COLLABORATION WITH RACIST REGIMES.

13. TNC NON-INTERFERENCE IN INTERNAL POLITICAL AFFAIRS (III(A)(5) FIRST AND SECOND SUB-PARAS). G-77 QUESTIONED NARROW, LEGAL DEFINITION OF IMPERMISSIBLE ACTIVITIES, ARGUING THAT HOST COUNTRY LAWS MIGHT NOT REACH EVERY POSSIBLE SPHERE OF POLITICAL INTERFERENCE. PROPOSED REVISIONS BY INDIAN AND MEXICAN DELS WOULD HAVE PROHIBITION OF IMPROPER INVOLVEMENT OR ILLEGITIMATE INTERFERENCE, OTHERWISE UNDEFINED. OECD COUNTRY INTERVENTIONS, LED BY U.S. DEL, ARGUED ON CONTRARY FOR MORE PRECISE LIMITED OFFICIAL USE
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FORMULAS CLEARLY LINKED TO LOCAL LAWS, NOTING FUNDAMENTAL SECTION IV ISSUES OF CLARITY AND PREDICTABILITY OF TREATMENT OF TNE'S RAISED BY THIS DISCUSSION, AND STRESSED NECESSARY PRESUMPTION OF LEGALITY OF ACTIVITIES NOT EXPRESSLY PROHIBITED BY LAW. NIKLASSON CLEARLY EMBRACED THIS VIEW IN HIS SUMMARY, AND COMMENDED CIEC GOOD CORPORATE CITIZEN FORMULATION.

14. ON QUESTION OF TNC'S ACTING AS POLITICAL VEHICLES OF GOVERNMENTS (THIRD SUB-PARA) INDIAN SUPRISINGLY TOOK LEAD IN NOTING POSSIBLE CONFLICT OF JURISDICTION QUESTIONS RAISED BY ANNOTATION, AND AGREED ONUS SHOULD BE ON GOVERNMENTS TO AVOID AND RESOLVE THESE. U.S. DEL, WITH FRG AND UK SUPPORT, SUGGESTED SUB-PARA BE DELETED IN LIGHT OF OTHER PORTIONS OF IIIA AND SECTION IV; U.S. ALSO CRITICIZED IMPRECISE DRAFTING, AND IN NOTING LINKAGE TO SECTION IV ISSUES, EXPRESSED NEED FOR ANY CODE TO RESPECT RIGHT OF TNC'S CONSISTENT WITH LOCAL LAWS TO LOBBY AND MAKE REPRESENTATIONS TO GOVERNMENTS. INDIAN AND MEXICAN URGED RETENTION OF PARA, ALTHOUGH AGREEING REDRAFTING MAY BE NECESSARY, AND NIKLASSON CONCURRED.

15. NON-INTERFERENCE IN INTERGOVERNMENTAL RELATIONS (III (A)(6)). NIKLASSON SUGGESTED THE SUB-PARAS UNDER THIS HEADING WERE NOT INTENDED TO REACH NORMAL COMMERCIAL PROMOTION BY GOVERNMENTS, NOR FORMAL CLAIMS OF GOVERNMENTS; NOR WERE TNC COMMUNICATIONS TO GOVERNMENTS IN QUESTION, UNLESS THEY SOLICITED "IMPROPER" GOVERNMENT ACTION. U.S. AND OTHER OECD COUNTRY DELS OBJECTED TO

PEJORATIVE TONE OF THE SUB-PARAS. U.S. DEL ADDED THAT WE PREFERRED THAT ISSUES OF DIPLOMATIC PROTECTION AND CLAIMS BE RAISED IN SECTION IV, AND THAT AN ANNOTATION REFLECT AN OPEN DOOR ON THE PART OF GOVERNMENTS TO TNC COMMUNICATIONS. CANADIAN UNHELPFULLY BROKE RANKS TO ENDORSE NIKLASSON FORMULATIONS AS USEFUL IN PROMOTING LIMITED OFFICIAL USE
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A COOPERATIVE INVESTMENT CLIMATE, AND STRESSED IMPORTANCE OF PRINCIPLE OF EXHAUSTION OF LOCAL REMEDIES. HOWEVER, OTHER CRITICAL INTERVENTIONS BY OECD DELS ON THIS ANNOTATION WERE NUMEROUS.

16. G-77 VIEW, EXPRESSED BY MEXICANS, EMPHASIZED AGAIN A CALVO APPROACH TO LEGAL REGULATION AND DISPUTE SETTLEMENT BUT, RECOGNIZING INEVITABILITY OF HOME COUNTRY INVOLVEMENT, SUPPORTED A DISTINCTION BETWEEN NORMAL AND IMPROPER REPRESENTATION. CENTER LEGAL ADVISER, AT INSTANCE OF CHAIRMAN, POSED HYPOTHETICALS TO FOCUS GROUP ON LATTER POINT. HE BLUNTLY PUT EXPROPRIATION CASE INVOLVING A U.S. TNC AND DIPLOMATIC THREATS TO INVOKE SANCTIONS (HICKENLOOPER ET AL), TO WHICH U.S. OBJECTED, SUPPORTED BY THE CHAIR. NIKLASSON IN HIS SUMMARY CONTINUED TO DRAW DISTINCTION BETWEEN IMPROPER POLITICAL AND ECONOMIC PRESSURES AND APPROPRIATE LEGAL ACTIONS, AND ENDORSED EXHAUSTION OF REMEDIES AS CONDITION PRECEDENT TO TNC SEEKING DIPLOMATIC SUPPORT.

17. U.S. DEL RESPONDED TO NARROW VIEWS OF G-77 AS WELL AS OTHER OECD COUNTRIES ON ROLE OF DIPLOMACY BY SIMPLY NOTING THAT U.S. CITIZENS WERE ENTITLED TO FULL BENEFITS OF U.S. LAW IN PROTECTION OF THEIR CLAIMS, WHICH WOULD ALWAYS BE INDEPENDENTLY DETERMINED BY USG. PRESENT U.S. POLICY ON ACTIVE AND EARLY FACILITATIVE ASSISTANCE AND DIPLOMATIC REPRESENTATION IN COURSE OF INVESTMENT DISPUTES, NOT TO MENTION LEGISLATIVE SANCTIONS, APPEARS TO LEAVE U.S. ISOLATED EVEN FROM MOST OTHER WESTERN DELS.

18. ILLICIT PAYMENTS (III(A)(7)). GROUP AGREED TO DEFER THIS ANNOTATION IN LIGHT OF WORK OF ECOSOC AD HOC WORKING GROUP. U.S. DEL NOTED LINKAGE TO SECTION IV.
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19. INTERGOVERNMENTAL COOPERATION (IV). DISCUSSION OF INTRODUCTORY PARA TO SECTION IV WAS OCCASION FOR RENEWED OECD COUNTRY INTERVENTIONS TO STRESS IMPORTANCE OF SECTION ON TNC TREATMENT IN VIEW OF GOAL OF MAXIMIZING POSITIVE TNC ECONOMIC CONTRIBUTIONS AND IMPROVEMENT OF

INVESTMENT CLIMATE. COOPERATION TO RESOLVE CONFLICTS OF JURISDICTION WAS EMPHASIZED AS ESSENTIAL ELEMENT OF CODE. U.S. AND UK DELS POINTED TO RELEVANT PARAS OF CIEC INVESTMENT TEXT ON COOPERATION THEME. UK DEL (DENHAM) ALSO NOTED THAT INFORMATION EXCHANGE MUST TAKE INTO ACCOUNT NATIONAL SECRECY LAWS AND NEED FOR SAFEGUARDS ON PROPRIETARY AND OTHER CONFIDENTIAL MATERIAL. ONLY NEGATIVE NOTE THAT OF KENYAN WHO UNDERLINED THAT RESOLVING OF TNC NEGATIVE ASPECTS SHOULD BE THE PRIMARY OBJECT OF INTERGOVERNMENTAL COOPERATION.

20. EQUITABLE, NON-DISCRIMINATORY TREATMENT (IV(A) FIRST SUB-PARA). U.S. TOOK LEAD ON THIS DIFFICULT TOPIC, COMMENDING RELEVANT OECD GUIDELINE AND CIEC LANGUAGE NO NATIONAL TREATMENT. RESPONDING TO QUESTION BY CHAIRMAN

TO GROUP, EQUITABLE TREATMENT IN THIS CONTEXT WAS DEFINED BY DEL PRINCIPALLY IN TERMS OF RESPECT FOR CONTRACTUAL OBLIGATIONS, INTERNATIONAL AGREEMENTS, AND DOMESTIC AND INTERNATIONAL LAW. U.S. INSISTED ON TOUGHER LANGUAGE ON RESPECT BY GOVERNMENTS OF SUCH OBLIGATIONS, AND OBJECTED TO MENTION OF SPECIAL FEATURES OF TNC'S AS CREATING POSSIBLE BASIS FOR DISCRIMINATION.

21. INDIAN DEL TOOK CIEC GOOD CORPORATE CITIZEN CONCEPT AND TIED IT TO STANDARDS OF TNC TREATMENT DEFINED EXCLUSIVELY IN TERMS OF LOCAL LAW; MOREOVER, UNIQUE PROBLEMS POSED BY TNC'S WOULD REQUIRE VARIATION FROM NATIONAL TREATMENT TO ENSURE ADEQUATE NATIONAL CONTROL. G-77 ALSO WISHED CODE TO EXPRESS PROHIBITION OF PREFERENTIAL LIMITED OFFICIAL USE
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TREATMENT OF TNC'S, WHICH FRG DEL RIGHTLY NOTED COULD CALL INTO QUESTION BILATERAL INVESTMENT GUARANTY AND OTHER AGREEMENTS, AS WELL AS INDIVIDUAL CONTRACTUAL ARRANGEMENTS BETWEEN HOST GOVERNMENTS AND TNC'S. MEXICAN DEL ADDED THAT REFERENCE TO INTERNATIONAL LAW PROBLEMATIC IF BY IT WERE MEANT SOMETHING OTHER THAN TREATIES AND WORLD COURT DECISIONS; AT ANY EVENT, HE STATED, ANY OTHER APPLICABLE NORMS WOULD HAVE TO BE SPECIFIED. AT HIS REQUEST, CENTER LEGAL ADVISER COMMENTED POSITIVELY ON NATURE OF RELEVANT INTERNATIONAL LAW, AND ASSOCIATED HIMSELF WITH THOSE WHO REJECT EXCLUSIVITY OF DOMESTIC LAW IN FAVOR OF RECOGNITION OF CERTAIN MINIMUM INTERNATIONAL STANDARDS OF PROTECTION OF ALIEN PROPERTY, ALTHOUGH DRAWING THESE NARROWLY.

22. HEAVY OECD COUNTRY PARTICIPATION FOCUSED ON OECD GUIDELINES DISTINCTION BETWEEN ESTABLISHMENT AND SUBSEQUENT OPERATIONS OF INVESTOR, AND LINKAGES TO OTHER OUTLINE SECTIONS. SWEDISH DEL HOWEVER SEEMED TO AGREE

WITH INDIAN THAT SOME SPECIAL ASPECTS OF TNC'S, LIKE INTRAGROUP TRANSACTIONS, COULD REQUIRE EXCEPTIONS TO NATIONAL TREATMENT. CANADIAN DEL (COLLI), IN POORLY TIMED REMARK, LINKED NATIONAL TREATMENT TO ACCESS TO COURTS AND ARBITRATION, AND MINIMIZED DISTINCTION OF ENTRY CONDITIONS ON INVESTMENT BY STATING THAT CANADA RECOGNIZES RIGHT OF STATES TO CHANGE POLICIES AFFECTING EXISTING INVESTMENT IF POLICY DIRECTION GENERALLY PREDICTABLE AND ACCESS TO COURTS OPEN. COLLI SEEMED A BIT APOLOGETIC ABOUT THIS STATEMENT AFTERWARDS IN COMMENTS TO U.S. DEL, BUT HE STRESSED CONSISTENCY WITH CANADIAN RESERVATION TAKEN ON OECD GUIDELINES.

23. SOVIETS AND GDR DEL TOOK THIS DISCUSSION AS OPPOR-
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TUNITY TO SPEAK UP AND CALL SECTION IV INTO QUESTION,
REJECTING NOTION OF "DUTIES" OF STATES IN THIS AREA,

INDICATED IN ASIDE TO U.S. DEL THAT ISSUE COULD BE
DRAFTED AROUND, AND WE JUDGE FROM QUIET ROLE OF EAST
EUROPEANS THAT INTERVENTIONS WERE LARGELY FOR THE RECORD,
AND THAT THEY MAY REMAIN BYSTANDERS ON MOST ISSUES.
DEFERRED QUESTION OF DEFINITION OF TNC'S IN PARTICULAR
WILL BE SORE POINT.

24. CLARITY AND STABILITY OF NATIONAL LAWS AND POLICIES
(IV(A) SECOND SUB-PARA). GROUP QUICKLY AGREED THAT
NEED FOR TRANSPARENT AND PREDICTABLE LEGAL AND POLICY
ENVIRONMENT FOR TNC'S WAS IMPORTANT, WITH APPARENT
CONSENSUS ON UTILITY OF PARA 5 OF CIEC INVESTMENT TEXT.

25. RIGHTS OF TNC'S IN APPLICATION AND MODIFICATION OF
LAWS (IV(A) THIRD SUB-PARA). USE OF TERM "RIGHT"
TRIGGERED STRONG G-77 REACTION, AND MISINTERPRETATION
OF THRUST OF SUB-PARA AS ENCOURAGING POLITICAL INTER-
FERENCE BY TNC'S. U.S. REFERRED TO CIEC PARA 5 ON
MODIFICATION OF LAWS AFFECTING INVESTORS AS APPROPRIATE
MODEL, NOTING USE OF WORD RIGHTS THERE DERIVED FROM
RELEVANT CONTRACTS, AGREEMENTS, AND DOMESTIC AND INTER-
NATIONAL LAW. U.S. DEL ALSO COVERED MOST OF POINTS IN
IV (A) OF U.S. REDRAFT OF OUTLINE. WHILE THIS SUB-PARA
OVERLAPPED WITH OTHERS, OECD COUNTRIES URGED ITS RETEN-
TION IN FACE OF G-77 CALLS FOR DELETION. NIKLASSON
RECOMMENDED TEXT BE RETAINED, BUT SCOPE FURTHER CLARIFIED
IN GROUP DELIBERATIONS.

26. GOVERNMENT ABSTENTION FROM POLITICAL USE OF TNC'S
(IV(A) FOURTH PARA). BRIEF DISCUSSION ON THIS ANNOTATION
AT END OF FIRST WEEK OF SESSION NOTED AMBIGUITIES IN
DRAFTING, WHICH RAISED PROBLEMS OF TNC COMPLIANCE WITH

BENIGN NATIONAL POLICIES, SUCH AS DEVELOPEMNT OBJECTIVES.
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G-77 EMPHASIS ON HOME COUNTRIES WAS COUNTERED BY OECD
COUNTRIES NOTING THAT POLITICAL USE OF TNC'S MIGHT BE
TWO-WAY STREET. US DEL NOTED IMPORTANT LINKAGES TO
OTHER ISSUES IN SECTIONS IIIA AND IV, AND THAT ANNOTATION

RAISED AGAIN QUESTION OF RECOGNITION OF ROLE OF
DIPLOMATIC REPRESENTATION AND PROTECTION. JAPAN DEL
QUESTIONED WHETHER ANNOTATION WOULD EMBRACE LOBBYING

AND OTHER PRESSURES BY LABOR ORGANIZATIONS AND PRIVATE
INTEREST GROUPS. VANCE

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